

IN THE  
Supreme Court of the United States

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IN THE  
**Supreme Court of the United States**

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**October Term, 1972**

**No. 71-1583**

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**EDMUND G. BROWN, JR., Secretary of the State of California,**

*Appellant,*

**vs.**

**RAYMOND G. CHOTE,**

*Appellee.*

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**Appeal From the United States District Court  
Northern District of California**

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**APPENDIX.**

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IN THE  
Supreme Court of the United States

October Term, 1972  
No. 71-1283

LEONARD G. BROWN, JR., Secretary of the State of California,

Appellant,

RAYMOND G. CHUTE,

Appellee.

Appeal from the United States District Court  
Northern District of California

APPENDIX



## DOCKET ENTRIES

Chote, Raymond G. Plaintiff vs. Brown, Edmund,  
Sec. State of Calif. Defendants.

Attorneys: Attorney General State of California,  
Room 500, Wells Fargo Bank Bldg., Fifth Street and  
Capitol Mall, Sacramento, CA 95814.

In Pro. Per. 628 Waverly St., Palo Alto, Ca. 94301.  
Civil rights—filing fees.

Mar. 3:

1. Filed complaint, issued summons.
2. Filed affdt in forma pauperis
3. Filed ORD granting leave to proceed in forma pauperis
4. Filed OSC hrg. 3/8 4:00

Mar. 8:

5. Filed order convening 3 Judge Court, consisting of Judges Oliver D. Hamlin, CJ, Albert C. Wollanberg & William T. Sweigert, DJ's. (Richard H. Chambers, CJ).

Mar. 7:

6. Filed Notice of conveninf of 3 judge court.

Mar. 8:

ORD: after hrg before 3 judge court Pltf. Mo. for  
OSC for Prelim  
Filed inj. stands submitted.

Mar. 8:

- 6-A. Return on Order to Show Cause by defendant.

Mar. 9:

7. Filed Memorandum of decision in favor of pltf. and preliminary injunction against the defendant.

**Mar. 23:**

8. Filed ANS of debt to comp.

**Apr. 7:**

9. Filed notice of appeal to Supreme Court of the United States by Deft Edmund G. Brown, Jr., Secretary of State of Calif.

**Apr. 7:**

Mailed Clerk's notice of filing Appeal to parties of record.

**Apr. 13:**

10. Filed designation of record by deft. requesting the entire record and the Reporter's Transcript.

**Apr. 17:**

11. Filed designation of record on appeal by Pltff.

**Apr. 25:**

12. Filed copy of letter to Raymond G. Chote from Carl R. Pline official Court Reporter dated April 25-72.

**Apr. 25:**

13. Filed Original & 1 copy of Court Reporter's Transcript of Mar 8-72.

**Apr. 27:**

Made, Mailed Record on Appeal to Supreme Court of the United States by Certified Mail Receipt No. 224334.

**May 4:**

14. Filed receipt for file from Supreme Court.

**Complaint for Injunctive and Declaratory  
Relief (Civil Rights)**

In the United States District Court, for the Northern  
District of California.

Raymond G. Chote, Plaintiff vs. Edmund G. Brown,  
Jr. Secretary of State of California, Defendant. C-72-  
380, WTS.

Filed: Mar. 3, 1972.

**I, JURISDICTION**

1. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, 28 U.S.C. § 1343(3), and 28 U.S.C. § 1343(4). The amount in controversy in this action, exclusive of interests and costs, exceeds Ten Thousand Dollars (\$10,000.00) for the plaintiff.

2. Declaratory judgments are authorized by 28 U.S.C. §§ 2201, 2202, and Rule 57 of the Federal Rules of Civil Procedure.

3. This action is authorized by 42 U.S.C. § 1983, which provides redress for the deprivation under color of law of rights, privileges, and immunities secured to all citizens and persons within the jurisdiction of the United States by the Constitution and laws of the United States.

**II. PRELIMINARY STATEMENT**

1. Plaintiff, individually and on behalf of all others similarly situated, seek to have this Court declare invalid, and enjoin the enforcement of California Election Code Secs. 6552 & 6553. These sections discriminatorily require the payment of filing fees by persons seeking to have their names placed upon the ballot as candidates for elective office. Enforcement of these sections by the defendant, Secretary of State of Califor-

nia, denies poor residents of California their right to run for public office and denies all residents of California their right to consider and vote for the candidates of their own choice. Such deprivations violate plaintiff's rights under the First Amendment and under the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

2. This action also seeks a declaratory judgment declaring that the California Election Code Secs. 6552 & 6553 are unconstitutional, since they deny plaintiff and others similarly situated of their rights to run for elective office and to vote for the candidates of their own choice.

### III. PLAINTIFF

1. Plaintiff RAYMOND G. CHOTE and all others similarly situated are residents of the State of California who desire to be candidates for elective office in the June 6, 1972 primary election. Plaintiff CHOTE and all others similarly situated meet all the legal requirements for elective office except for their inability to pay filing fees, as a requirement of the California Election Code Secs. 6552 & 6553.

2. Plaintiff RAYMOND G. CHOTE and others similarly situated are—and/or represent—residents of the State of California, who are registered to vote in the June 6, 1972 primary election. Plaintiff CHOTE and all others similarly situated—are and/or represent—registered voters who desire to consider and vote for plaintiff CHOTE as candidate for Representative In Congress from the 17th Congressional District in California.

#### IV. DEFENDANT

1. Defendant Edmund G. Brown, Jr., as Secretary of State of California is responsible for the administration, supervision, and enforcement of laws, regulations, and state constitutions provisions pertaining to elections in the State of California; his responsibilities include the duty to certify the names to be placed upon the ballot as candidates for elective office.

#### V. BASIS OF CLASS ACTION

1. Plaintiff RAYMOND G. CHOTE brings this action pursuant Rule 23 of the Federal Rules of Civil Procedure on his own behalf and on behalf of all other residents of the State of California who desire to be candidates for elective office in the June 6, 1972 primary election and who meet all the legal requirements to have their names placed upon the ballot as candidates for elective office in the June 6, 1972 primary election except for their inability to pay filing fees, as required by Sections 6552 & 6553 of the California Election Code.

2. Plaintiff RAYMOND G. CHOTE and all others similarly situated bring this action as a class action for the following reasons: the questions of law and fact are common to the plaintiff and to the class he represents; the members of the class are so numerous as to make joinder impractical; the claims of the plaintiff are typical of the claims of all members of the class; the plaintiff fairly and adequately represents the claims of all members of the class; the defendant is acting on grounds generally applicable to the entire class; the questions of law and fact common to the class predominate over any questions affecting individual members; and a class action will best provide a fair and



efficient adjudication of the important issues at stake here.

## VI. STATEMENT OF THE CLAIM

1. Sections 6552 & 6553 of the California Election Code requires persons who seek to have their names placed upon the ballot as candidates for elective office to pay filing fees. These Sections require a fee of one percent or two percent of the annual salary of the office sought to be paid as a fee for filing as a candidate for that office.

2. Plaintiff RAYMOND G. CHOTE is 46 years old and has lived in the City of Palo Alto, County of Santa Clara in California since July of 1970. He is retired from the United States Navy Reserve as a Commander. His retirement is without pay.

3. On February 17, 1972 Plaintiff CHOTE was a registered voter in the County of Santa Clara and had been so registered for more than one year. On February 17, 1972 plaintiff CHOTE telephoned the Registrar of Voters in Santa Clara County and was advised that a fee of \$425.00 must be paid in advance in order to receive the necessary sponsors certificates and other papers needed to be placed on the ballot of the primary election to be held June 6, 1972 for the office of Representative to Congress from the 17th District. Plaintiff CHOTE asked if the papers would be delivered in exchange for a worthless check and the answer was yes. Plaintiff CHOTE went the same day to the office of the Registrar of Voters in Santa Clara County and presented a check drawn in the amount of \$425.00 payable to the Secretary of State of California. Across the face of the check was typed in "Written under protest for filing fee". The Registrar of Voters



said that the check will be given to the Secretary of State along with the completed papers required to place a name on the ballot. The Deputy Secretary of State, Richard Maullin, speaking for and with full knowledge of the Secretary of State of California informed the plaintiff CHOTE on March 1, 1972 that the Secretary of State will not allow plaintiff's name to be placed on the ballot if the check written for the filing fee is not honored at the bank. The check will not be honored since there is only a token amount in that account and the plaintiff has no expectations of having enough to pay the fee before the date of March 20, 1972 when the ballots go to the printers. March 10, 1972 is the closing date for filing and this may well be the date by which action should be taken by the COURT to avoid irreparable harm to the plaintiff CHOTE.

4. Plaintiff CHOTE meets all legal requirements to have his name placed on the ballot for the office of Representative In Congress from the 17th District of California except that he is unable to pay the filing fee of \$425.00.

5. The application and enforcement of Section 6552 & 6553 of the California Election Code results in an invidious discrimination based solely upon the factor of wealth. It discriminates against many poor persons in California who may be qualified for and desirous of elective office, but who completely and effectively are denied the right to seek such positions because of their impoverished condition. Moreover there is no compelling of the State of California to require payment of a filing fee.

## **VII. CAUSE OF ACTION**

1. In a related case, **WONG et al. vs. MIHALY C-71 1771 ACW** of the **UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA** substantial cause for action was set forth and granted by Judge Wollenberg on September 17, 1972.

## **VIII. BASIS FOR INJUNCTIVE RELIEF**

1. Plaintiff and members of the class he represents will suffer irreparable injury if the relief sought by them is not granted, since they will continue to be denied their rights to equal protection and due process of laws, their rights to seek and be considered for elective public office, and their rights to vote for candidates of their choice.

2. No previous application for the relief sought herein has been made to this or any other court.

3. No adequate remedy at law is available to plaintiff or to any member of the class he represents.

## **XI. BASIS FOR DECLARATORY RELIEF**

An actual controversy has arisen and now exists between plaintiff and defendant, whereby plaintiff contends the California Election Code Sections 6552 & 6553 are unconstitutional and null and void insofar as filing fees are required, and defendant contends he will continue to enforce the requirement for filing fees. Plaintiff desires both a declaration that the requirement under California law that filing fees be paid is unconstitutional, null and void, and an injunction enjoining and restraining defendant from further enforcement of California Election Code Sections 6552 & 6553 insofar as they require a filing fee.

**WHEREFORE;** plaintiff respectfully prays on behalf of himself and all members of the class he represents that this COURT:

1. Issue a temporary restraining order enjoining and restraining defendant from refusing to list defendant on the ballot of the June 6, 1972 primary election to the office of Representative In Congress from the 17th District of the State of California solely for non-payment of the filing fee.

2. Issue a declaratory judgment declaring that Sections 6552 & 6553 insofar as they require payment of filing fees are unconstitutional and null and void.

3. Issue an order to the defendant to return the check written under protest for the filing fee to the plaintiff and bring no action against the plaintiff for writing said check.

4. Order the defendant to pay any costs of this proceeding.

5. Grant such other relief as the COURT deems appropriate.

**RAYMOND G. CHOTE**

628 Wavery Street

Palo Alto

California 94301

415 328-9428

**Motion for Temporary Restraining Order and  
Order to Show Cause**

In the United States District Court, for the Northern District of California.

Raymond G. Chote, Plaintiff vs. Edmund G. Brown, Jr. Secretary of State of California, Defendant. C-72-380, WTS.

Filed: Mar. 3, 1972.

Plaintiff hereby moves, because of the danger of immediate irreparable injury that might flow, for a Temporary Restraining Order and Order to Show Cause, as follows:

1. That defendant EDMUND G. BROWN, JR., Secretary of State of California, his successors in office, agents, and employees, and all other persons in active concert and participation with him, be restrained and enjoined from commencing the printing, dissemination, or publication of that part of the ballot for the June 6, 1972 primary election in the seventeenth Congressional District of the State of California which covers candidates for elective public office.

2. That defendant EDMUND G. BROWN, Jr., Secretary of State of California, his successors in office, agents, and employees, and all other persons in active concert and participation with him, be restrained and enjoined from refusing to accept, certify, and file declaration of candidacy from plaintiff RAYMOND G. CHOTE, and all others similarly situated, from refusing to hear and certify sponsors who appear before defendant EDMUND G. BROWN on behalf of plaintiff Raymond G. Chote, and all others similarly situated, and from refusing to take any other steps in furtherance of the desires of plaintiff RAYMOND G.

CHOTE, and all others similarly situated to seek elective public office.

3. It is ordered that

4. All pleadings, affidavits, and briefs in support of the application for Preliminary Injunction shall be served upon defendant on or before March 6, 1972, at 5:00 P.M.

5. That the defendant show cause before this Court, in courtroom, 1, United States Courthouse, 450 Golden Gate Avenue, San Francisco, California, on March 8, 1972, at 4:00 P.M., why plaintiff's Motion for a Preliminary Injunction should not issue as prayed for in said Complaint.

6. That plaintiff's Motion for a Preliminary Injunction and all pleadings, affidavits, and briefs in support thereof shall be served upon defendant on or before March 6, 1972, at 5:00 P.M.

7. That defendant's opposition, counter-affidavits, and briefs be filed on or before March 8, 1972. [W.T. Sweigert U.S.D.C. March 3, 1972].

This Motion for Temporary Restraining Order and Order to Show Cause is made pursuant to Rule 65 of the Federal Rules of Civil Procedure and is based upon this Motion, and the Complaint for Injunctive and Declaratory Relief.

RAYMOND G. CHOTE

628 Waverly St.

Palo Alto, California, 94301

(Phone 415 328 0451)



**Return to Order to Show Cause**

United States District Court, Northern District of California.

Raymond G. Chote, Plaintiff, v. Edmund G. Brown, Jr., Secretary of State of the State of California, Defendant. No. C-72-380.

Filed: Mar. 8, 1972.

**COMES NOW THE DEFENDANT EDMUND G. BROWN, JR.** and in return to the order to show cause heretofore issued in the above entitled matters files this opposition to the granting of a preliminary injunction.

This opposition will be based upon the papers and files in this matter on file in the above entitled court; this return and the points and authorities, exhibits and affidavits in support thereof.

Defendant Edmund G. Brown, Jr. opposes the issuance of a preliminary injunction on the following grounds:

1. Plaintiff has failed to state a claim upon which relief can be granted.
2. Plaintiff has stated no facts entitling him to relief as the proponent of a class action.
3. Plaintiff has stated no facts entitling him to declaratory relief.
4. Plaintiff is seeking equitable relief from this court with unclean hands.

Respectfully submitted,

**EVELLE J. YOUNGER**

**Attorney General**

**ROBERT BURTON**

**Assistant Attorney General**

**J. M. SANDERSON**

**Deputy Attorney General**

**Attorneys for Defendant**



## POINTS AND AUTHORITIES

### PRELIMINARY STATEMENT

Plaintiff in this case apparently is seeking to challenge the constitutionality of the statutes in the California Elections Code which requires a filing fee in order to run for the office of Member of the House of Representatives.

He has affirmatively pleaded that he has issued a check payable to the Secretary of State of the State of California with insufficient funds in the bank to pay said check. On the basis of this check plaintiff has received his nominating papers from the County Clerk of Santa Clara County. As of this date plaintiff has not returned said nominating papers with sufficient signatures to qualify him as a candidate to the County Clerk of Santa Clara County.

The shortness of time allowed for defendant to make this return prevents him from preparing complete points and authorities. In this regard and in support of the validity of the filing fees required by California statute defendant has attached hereto as Exhibit A and is incorporating said Exhibit A by reference as though fully set forth herein points and authorities which were prepared for and filed in a similar case in the Superior Court of the State of California for the County of Los Angeles.

### I

#### PLAINTIFF DOES NOT SET FORTH SUFFICIENT GROUNDS TO BRING THIS ACTION AS A CLASS ACTION

There are no allegations that any other person has ever been refused the right to run for office because he was unable to pay a filing fee nor that anyone has sought to run for office without paying a filing fee.

The federal rules of civil procedure require that members of the class be notified by the court in the event a class action is being prosecuted so that they may join in the action as they choose. There is no practical way for the court, in this instance, to notify members of a class which is not defined. Indeed, there is no showing that any such class exists at all. Therefore, this matter should not be tried as a class action but only as an action on behalf of plaintiff. *DeBremaecker v. Short*, 433 F.2d 733, 734 (1970); *Committee To Free The Fort Dix 38 v. Collins*, 429 F.2d 807, 812 (1970). Further, plaintiff has not established that he can adequately represent a class. *Anderson v. Moorer*, 372 F.2d 747, 751 (1967).

## II

### THERE EXISTS NO CONTROVERSY BETWEEN THE PLAINTIFF AND THE DEFENDANT ENTITTLING PLAINTIFF TO DECLARATORY RELIEF

Plaintiff alleges that he contends Elections Code sections 6552 and 6553 are unconstitutional and that defendant contends that said sections are constitutional.

While this is apparently so it does not rise to the dignity of a judicial controversy litigable in this court. Plaintiff has alleged that he has received his nominating papers from the County Clerk of Santa Clara County. He has not alleged that he has been refused the right to file such papers. Until such time as such refusal is made there exists no judicial controversy between plaintiff and defendant.

III

**PLAINTIFF APPROACHES THIS COURT WITH  
UNCLEAN HANDS**

Plaintiff has alleged in his complaint that he presented a check to the Registrar of Voters in Santa Clara County payable to the Secretary of State of California in the amount of \$425. He has further alleged that there is only a token amount in the bank account upon which the check is written and that he has no intention of increasing the amount in that bank account so that the check may be honored when presented for payment. California Penal Code section 476(a) provides in part as follows:

"Any person who for himself . . . wilfully, with intent to defraud makes or draws . . . any check . . . upon any bank . . . for the payment of money, knowing at the time of such making, . . . that the maker . . . has not sufficient funds in, or credit with said bank . . . for the payment of such check . . . in full upon the presentation, although no express representation is made with reference thereto, is punishable by imprisonment in the County Jail for not more than one year, or in the State Prison for not more than 14 years."

It thus appears that plaintiff has affirmatively alleged the commission of a felony in order to obtain nomination papers to seek office as a member of the House of Representatives. Plaintiff thus approaches this court seeking equitable relief with unclean hands.

As stated in *Precision Inst. Mfg. Co. v. Automotive M. M. Co.*, 324 U.S. 806, 814-815 (1945):

"The guiding doctrine in this case is the equitable maxim that 'he who comes into equity must

come with clean hands.' This maxim is far more than a mere banality. It is a self-imposed ordinance that closes the doors of a court in equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant. That doctrine is rooted in the historical concept of court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be 'the abetter of iniquity.' [Citations.] Thus while 'equity does not demand that its suitors shall have led blameless lives,' [citations] as to other matters, it does require that they shall have acted fairly and without fraud or deceit as to the controversy in issue. [Citations.]

"... Accordingly one's misconduct need not necessarily have been of such a nature as to be punishable as a crime or as to justify legal proceedings of any character. Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim by the chancellor."

"Moreover, where a suit in equity concerns the public interest as well as the private interests of the litigants this doctrine assumes even wider and more significant proportions. For if an equity court properly uses the maxim to withhold its assistance in such a case it not only prevents a wrongdoer from enjoying the fruits of his transgression but averts an injury to the public. . . . [Citations.]"

**CONCLUSION**

For the foregoing reasons defendant specifically requests that a preliminary injunction be denied.

Respectfully submitted,

**EVELLE J. YOUNGER**

Attorney General

**ROBERT BURTON**

Assistant Attorney General

**J. M. SANDERSON**

Deputy Attorney General

Attorneys for Defendant



In the United States District Court, Northern District of California.

BEFORE:

HON. OLIVER D. HAMLIN, JR., CIRCUIT JUDGE

HON. ALBERT C. WOLLENBERG, DISTRICT JUDGE

HON. WILLIAM T. SWEIGERT, DISTRICT JUDGE

Raymond G. Chote, Plaintiff, vs. Edmund G. Brown Jr., Secretary of State of California, Defendant. No. Civil 72-380-WTS.

REPORTER'S TRANSCRIPT

MARCH 8, 1972

WEDNESDAY

REPORTED BY:

CARL PLINE

MARCH 8, 1972

THE COURT CRIER: The United States District Court for the Northern District of California, sitting as a Three-Judge Court, is now in session, composed of the Honorable Oliver D. Hamlin, Circuit Judge; Honorable Albert C. Wollenberg, District Judge; and Honorable William T. Sweigert, District Judge.

JUDGE SWEIGERT: All right.

THE COURT CRIER: Be seated, please.

THE CLERK: Civil action 72-380, Raymond Chote vs. Edmund G. Brown, Jr., Secretary of State of California, hearing an order to show cause why preliminary injunction should not issue.

Will counsel please state their appearances for the record?



JUDGE SWEIGERT: Mr. Chote—

MR. CHOTE: Yes, sir.

JUDGE SWEIGERT: —you have no attorney, have you?

MR. CHOTE: That's right, sir.

JUDGE SWIGERT: So you are appearing for yourself in this matter?

MR. CHOTE: Yes, sir.

JUDGE SWEIGERT: All right.

And then we have the appearance of Mr. Chote, the plaintiff; and for the defendant is Mr. Sanderson, I take it. [3]

MR. SANDERSON: Yes, Your Honor. James M. Sanderson, Deputy Attorney General.

JUDGE SWEIGERT: Attorney General's office.

And are you ready to proceed now, Mr. Chote?

MR. CHOTE: Yes, sir.

JUDGE SWEIGERT: Did you wish to make any presentation beyond what you have in your papers? Or, I could suggest to you—I could suggest to you that it might be well to let the Attorney General proceed and see what, if any, opposition he is going to raise to your petition. Then you could speak to us after he finishes if that is agreeable with you. Generally—

MR. CHOTE: Yes, sir, that is. I have no objection, and I appreciate the suggestion.

JUDGE SWEIGERT: All right, sir.

Plaintiff seems willing to have you tell us, Mr. Sanderson, what you think is wrong with this application, if there is anything wrong with it.

JUDGE WOLLENBERG: May I suggest that the Attorney General has filed a return with copious points and authorities and attachments thereto, and it may be that it is not necessary to repeat this long, full return.

JUDGE SWEIGERT: Well, I'm quite sure of that. I would simply say this: That due to the shortness of the time the return was not filed until today—[4]

MR. SANDERSON: That's correct.

JUDGE SWEIGERT: —and we have not had an opportunity to go over the State's return.

Now, let me ask you: Have you got everything in this answer or return that you think should be in it, together with all your points and authorities and reasons?

MR. SANDERSON: I have everything in it, Your Honor, except an answer to the complaint. I did not file an answer in return.

JUDGE WOLLENBERG: That is right.

JUDGE SWEIGERT: That is all right.

Are we to consider that the allegations of the complaint are to be taken as true?

MR. SANDERSON: No, Your Honor. I would ask leave to file an answer, and deny some of the allegations in the complaint at least.

JUDGE SWEIGERT: What matters of fact are in issue, if any?

MR. SANDERSON: Well, let me look at the complaint, if I may, Your Honor.

JUDGE SWEIGERT: Yes.

MR. SANDERSON: The first matter of fact, I think, in issue, Your Honor, is the plaintiff's indigency.

JUDGE SWEIGERT: The plaintiff's what?

MR. SANDERSON: Indigency, or alleged lack of assets [5] in order to file a—to pay the filing fee.

JUDGE SWEIGERT: All right. He alleges he is indigent—

MR. SANDERSON: He alleges that he does—we have no information or belief regarding that, and un-

der the Code of Civil Procedure we would deny it on that basis.

JUDGE SWEIGERT: All right; that is fine.

What other factual matters do you consider as an issue?

MR. SANDERSON: Well, the basis for declaratory relief, Your Honor. We don't feel that there is a controversy—this is set forth in my points and authorities, however. It is covered in that.

JUDGE WOLLENBERG: Yes.

JUDGE SWEIGERT: Well, I know, but what real factual allegations are to be—

MR. SANDERSON: Well, the one factual allegation that he makes that I do take issue with is that he has met all of the legal requirements to have his name placed on the ballot for the office of Representative of Congress.

JUDGE SWEIGERT: Well, I know; but that is a conclusion anyhow.

Any order of this Court would have a qualification that he be otherwise qualified.

MR. SANDERSON: Well, I filed an affidavit with [6] regard to that, Your Honor, and it is on Exhibit No. C, in which it is noted that he has not returned—although he has taken out his nomination papers, he has not returned them to the County Clerk. And unless he returns these papers, of course, he is not qualified, regardless of anything.

And in that situation I don't think it is proper for a—

JUDGE SWEIGERT: In other words, you are—

MR. SANDERSON: —preliminary injunction issue.

JUDGE SWEIGERT: Just a moment. You are raising a question with respect to what? The time that he . . .

**MR. SANDERSON:** He has not done everything necessary to be a candidate for the Congress of the United States, Your Honor; that is what I am saying. And he is asking to be put on the ballot, even though he has not complied with the statutory laws of the State of California, Your Honor.

**JUDGE SWEIGERT:** Well, in what respect has he not otherwise—

**MR. SANDERSON:** He has not filed his nominating papers with sponsors.

**JUDGE WOLLENBERG:** Yes.

**MR. CHOTE:** Your Honor, I have the papers here with the sponsors—

**JUDGE SWEIGERT:** Just a moment.

**JUDGE WOLLENBERG:** This isn't the Registrar's Office. [7]

**JUDGE SWEIGERT:** No, it is not.

The statute says that the fee should be paid to the County Clerk at the time the forms for nomination are obtained.

**MR. SANDERSON:** That's correct, Your Honor.

**JUDGE SWEIGERT:** And he shall not accept any papers unless the fees are paid at the time.

**MR. SANDERSON:** That's correct, Your Honor.

**JUDGE SWEIGERT:** All right.

And you are saying that he has not—he has not attempted to obtain the forms of nomination?

**MR. SANDERSON:** No. No, no.

He has obtained the nomination forms.

He alleges in his complaint—

**JUDGE SWEIGERT:** You admit that he has obtained the nomination forms?

**MR. SANDERSON:** That's correct.

**JUDGE SWEIGERT:** All right. And the statute says that the fee required to be paid to the Secretary of State shall be paid to the County Clerk at the time the forms for nomination are obtained.

**MR. SANDERSON:** Yes, Your Honor.

**JUDGE WOLLENBERG:** The complaint alleges, Judge Sweigert, that he has the forms and that he gave a check, and the check—at the time he gave it he stated he didn't [8] have the money; the check was no good. He told—

**JUDGE SWEIGERT:** Yes.

**JUDGE WOLLENBERG:** —the Registrar that.

I mean, that is in the plaintiff's pleadings as a fact, you see.

**JUDGE SWEIGERT:** Well, I know; but—

**JUDGE WOLLENBERG:** Yes. I mean I thought that you didn't know that.

**JUDGE SWEIGERT:** He alleges that in effect that he is unable to pay the fee, and that the County Clerk told him that he would have to pay the fee in advance.

That raises the issue, doesn't it?

**MR. SANDERSON:** Well, there is a further issue, Your Honor. And that is he alleges that he gave a check without funds in the bank so that the check could be honored to the Clerk.

**JUDGE SWEIGERT:** Yes.

**MR. SANDERSON:** Also in Exhibit No. C, which I have filed here, is an affidavit of the Clerk, disputing the fact that he or anyone in his office ever told him that he would issue nomination papers for a worthless check.

The complaint alleges that the check had noted across it "under protest" but it doesn't say "under



protest and without funds". And there is a considerable difference.

JUDGE WOLLENBERG: We are not trying any criminal [9] case here, so—

JUDGE SWEIGERT: All right.

MR. SANDERSON: Well, I raise that in—

JUDGE WOLLENBERG: —in this particular matter whether that is an essential issue—

MR. SANDERSON: Well, I raise that in regard to the defense that he lacks clean hands before this Court, Your Honor.

JUDGE SWEIGERT: All right.

Anything else in the facts disputed?

Go ahead.

MR. SANDERSON: No, I don't think so, Your Honor.

JUDGE SWEIGERT: All right. What is the position of the Attorney General with respect to the merits of the case, the real issue; that is, whether or not these two Sections of the Code are valid?

MR. SANDERSON: Well, it is our position, Your Honor, that they are valid. And in Exhibit No. A to the return we have attached points and authorities—

JUDGE SWEIGERT: Yes.

MR. SANDERSON: —which were filed in the Superior Court of the State of California for Los Angeles County in another case, but with similar issues.

JUDGE SWEIGERT: Superior Court, Los Angeles.

MR. SANDERSON: Yes, Your Honor. [10]

They were filed on March 1st, of this year.

JUDGE SWEIGERT: Yes.

MR. SANDERSON: And due to the shortness of time I simply incorporated them in here.

JUDGE SWEIGERT: Yes.



**MR. SANDERSON:** Now, it is our position through these points and authorities, that due to the case of *Bullock vs. Carter*, which is the United States Supreme Court—which came down on February 24th,—that reasonable filing fees are valid, and that the California filing fees are reasonable.

It is set forth in the points and authorities, Your Honor.

**JUDGE SWEIGERT:** Is that the way you construe the *Bullock* case? That the only question is whether or not the amount of the fee is reasonable?

**MR. SANDERSON:** If there is some rational basis for having the fee, Your Honor; and I think that has been shown in California and in other States, and recognized by the Courts that the limitation of people on the—the number of persons to be placed on the ballot is a rational consideration to take into account.

If the fees are reasonable, then this result—then the fees are valid. And I think that is the import of the *Bullock* case; yes. [11]

**JUDGE SWEIGERT:** All right. Is there anything else you wish to present?

**MR. SANDERSON:** No, Your Honor. I will submit it on my points and authorities, and what I have said here.

**JUDGE SWEIGERT:** All right.  
Do you want to hear further argument?

**JUDGE WOLLENBERG:** You promised the gentleman he could respond—

**JUDGE SWEIGERT:** He is responding now. He says he is willing to submit it—

**JUDGE WOLLENBERG:** No, no.  
You told the plaintiff that he could respond.

**JUDGE SWEIGERT:** Yes. We are going to hear from the plaintiff.

**JUDGE WOLLENBERG:** No, I have nothing.

**JUDGE SWEIGERT:** Did you want to hear anything further from the State?

**JUDGE HAMLIN:** No.

**JUDGE SWEIGERT:** All right. Then we look to your points and authorities, and whatever is in the record.

**MR. SANDERSON:** All right, Your Honor.

May I say one other thing?

**JUDGE SWEIGERT:** Yes.

**MR. SANDERSON:** —so that the record will show it? I filed the return today, and I served Mr. Chote at [12] approximately 1:30 in the Courtroom, here, with these points and authorities. I was unable to serve him prior to this time due to the shortness of time.

**JUDGE SWEIGERT:** Yes.

**MR. SANDERSON:** Thank you.

**JUDGE SWEIGERT:** All right, Mr. Sanderson.

Mr. Chote, is there anything that you want to present to us?

**MR. CHOTE:** Yes, sir.

On the point of indigency, I don't know whether—or what you want in proof.

At the time I needed to take out the papers, in a timely fashion, I in fact did not have the \$425; and I don't have it now; and I don't expect that I will have it by the time it would be due—this check would be cashed.

**JUDGE WOLLENBERT:** May I ask you, Mr. Chote—

**MR. CHOTE:** Yes, sir.

JUDGE WOLLENBERG: —did you file with this Court any affidavit showing that you have no—not only \$425, but no means of obtaining the same?

MR. CHOTE: Yes, I did—

JUDGE WOLLENBERG: Is that on file?

MR. CHOTE: —and Judge Schnacke approved a request of mine to proceed in forma pauperis.

JUDGE WOLLENBERG: That is his form to proceed in [13] forma pauperis.

JUDGE SWEIGERT: Yes. He is proceeding in forma pauperis.

JUDGE WOLLENBERG: Yes.

JUDGE SWEIGERT: And he alleges that he is unable to pay the \$425 fee.

JUDGE WOLLENBERG: Yes.

JUDGE SWEIGERT: But you would have in mind that whatever this Court did it might impose a condition to the effect that you would have to file with the Registrar, or County Clerk, some kind of an affidavit, or the equivalent, under oath, that you did not have funds or property that would enable you to pay this \$425.

MR. CHOTE: Yes.

JUDGE SWEIGERT: You have that in mind as a possibility?

MR. CHOTE: Yes, sir. And I could do that in good conscience.

JUDGE SWEIGERT: I see.

MR. CHOTE: Unfortunately, I not only don't have any money; I'm in the hole to some extent.

So from my point of view that isn't something that would deter me from continuing this request for relief.

JUDGE SWEIGERT: Whatever happened to the check that you were talking about with the County Clerk? Did you leave [14] it with them or not?

MR. CHOTE: Yes, sir.

JUDGE SWEIGERT: You actually left it with them.

MR. CHOTE: Mr. Mann's secretary has it in her deck, and they said at the time—

JUDGE HAMLIN: Has it been sent to a bank?

MR. CHOTE: No, it has not. At the time—

JUDGE SWEIGERT: You admit that it will not be paid?

MR. CHOTE: Yes, that's correct.

JUDGE SWEIGERT: And you told that to the Registrar?

MR. CHOTE: Yes.

JUDGE HAMLIN: What bank is it on?

MR. CHOTE: It is on the Liberty Bank, sir, in Los Altos.

JUDGE HAMLIN: And how much money do you have in that bank?

MR. CHOTE: About \$2.00.

JUDGE WOLLENBERG: And that was so when you wrote the check?

MR. CHOTE: Yes, sir. I have purposely not attempted to—

JUDGE WOLLENBERG: What more is there to do in this case?

JUDGE SWEIGERT: What? [15]

JUDGE WOLLENBERG: What more is there to do in this case?

JUDGE SWEIGERT: What do you suggest?

JUDGE WOLLENBERG: Well, is there something else you want to say?

MR. CHOTE: Yes, sir. There are some other things.

JUDGE WOLLENBERG: All right.

**MR. CHOTE:** In the—according to the legal requirements, March 10th is the date in which—they have as a deadline for accepting the filings of sponsors.

**JUDGE SWEIGERT:** Yes.

**MR. CHOTE:** I have brought with me into the Court sponsor certificates with more than the 40 numbers of signatures required already on them. And I have reason to believe they are all good signatures; most of them were taken from records of the Registrar.

**JUDGE SWEIGERT:** Yes. And the statute says that the County Clerk will not accept any papers unless the fees are paid at the time.

And they were—the fee was supposed to be paid at the time the forms for nomination were obtained.

**JUDGE WOLLENBERG:** Well, I think you will find that the Opinion of the Attorney General is contrary to that.

Isn't that correct, Mr. Sanderson?

**MR. SANDERSON:** What, Your Honor? [16]

**JUDGE WOLLENBERG:** It is the Opinion of the Attorney General that the forms may be given out prior to the payment of the money.

**MR. SANDERSON:** I am not aware of any such opinion, Your Honor.

**JUDGE SWEIGERT:** Well, it says—

**JUDGE WOLLENBERG:** Well, that is not so.

That is, 7 Ops. Atty. Gen. 119.

**MR. CHOTE:** Mr. Mann, the Registrar, said the only way that he would give them to me, me not having money, would be for me to give him a check which he would pass on along with the papers to the Secretary of State. And it would be the Secretary of State



who would determine then if there was no money available for this.

And I wrote across the face of the check "written under protest for filing fee."

JUDGE SWEIGERT: Now, wait a minute.

That wouldn't necessarily show that the check wouldn't be paid.

But you do allege in your complaint that you are unable; and I take it to mean that you haven't got \$425—

MR. CHOTE: That's correct.

JUDGE SWEIGERT: —in the Liberty Bank or otherwise.

MR. CHOTE: That's right. [17]

JUDGE SWEIGERT: All right.

Anything further that you think we ought to hear?

MR. CHOTE: Yes.

As far as the fee being reasonable, and the presentation of the Attorney General, I would like to have the Court note that in the case of Wong, et al. vs. Mihaly, last September in this Court, there was a judgment written by Judge Wollenberg—

JUDGE SWEIGERT: I think you need not go into that, because Judge Wollenberg is here, and we have his opinion.

MR. CHOTE: Yes, sir. I understand.

JUDGE WOLLENBERG: There is also one—I think Judge Hamlin has there—a Three Judge Court in Los Angeles, that you might give him the citation of. Judge Ely wrote an opinion just the other way—

JUDGE HAMLIN: Are you familiar with that, counsel?

MR. SANDERSON: Is that the Haag case, Your Honor?

**JUDGE HAMLIN:** Haag vs. State of California.

**MR. SANDERSON:** Yes, Your Honor. It is cited in my points and authorities.

**JUDGE WOLLENBERG:** Yes.

**MR. SANDERSON:** It is cited in the points and authorities that I filed—

**JUDGE HAMLIN:** Is it? Okay. [18]

**JUDGE SWEIGERT:** All right.

**MR. CHOTE:** Judge Sweigert, I would like to say one additional thing if I may.

**JUDGE SWEIGERT:** Yes.

**MR. CHOTE:** The Attorney General says that I come to the Court with unclean hands.

I deny this. I believe that I came here with a great deal of difficulty, and certainly not with unclean hands. And I did not attempt to hide anything, or do anything illegal.

**JUDGE SWEIGERT:** Yes. All right, sir, Fine.

Did you—normally, you would have a reply to the plaintiff. Would you want to add anything before we closed?

**MR. SANDERSON:** I just want to add one thing, Your Honor, I forgot.

We also take issue with the fact that Mr. Chote represents a class. He hasn't pleaded sufficient facts to indicate that a class exists, or that he could successfully represent it.

That is also covered in the points and authorities—

**JUDGE WOLLENBERG:** It is.

**MR. SANDERSON:** —but I wanted to indicate it as a dispute as far as the facts are concerned.

**JUDGE SWEIGERT:** All right, we have that in mind. [19]

MR. CHOTE: May I answer, that, sir?

JUDGE SWEIGERT: If you wish, briefly.

MR. CHOTE: In the related case I mentioned, this identification of class was an item; and I didn't think it necessary to put it in this case.

JUDGE SWEIGERT: Yes. You mean in the Judge Wollenberg case.

JUDGE WOLLENBERG: In the Wong case?

MR. CHOTE: Yes, sir.

There are other people who don't have the filing fee, essentially.

JUDGE SWEIGERT: Yes.

JUDGE WOLLENBERG: A lot of people don't have filing fees, but wrote checks.

I don't know if there is a class in that fact, is there?

MR. CHOTE: If there is a point that I should respond to, I will; in that when I went to get these papers, and the time was short to get the signatures, Mr. Mann, the Registrar of Voters, told me that he simply would not give me these papers that I would need, without paying the filing fee.

And I asked him if I could pay it with a worthless check; and he said, "Yes." So I did; and I gave it to him.

JUDGE WOLLENBERG: Yes. [20]

JUDGE SWEIGERT: But you did tell him at the time, in effect, that the check was worthless?

MR. CHOTE: Yes, sir. I wrote, as I say, on the front of it.

JUDGE SWEIGERT: We will consider that. We accept this all in your complaint.

All right. If that is satisfactory, we will submit the matter?

MR. SANDERSON: Yes, sir.

MR. CHOTE: Yes, sir, unless you have some advice for me.

JUDGE SWEIGERT: Submitted.

MR. CHOTE: I don't know of anything else—

JUDGE SWEIGERT: No, we are looking for advice today, not giving it.

MR. CHOTE: Yes. Well, you were kind enough to give me some, and I thought maybe you would give me more.

JUDGE SWEIGERT: Is there any way we can help you, though? You are without an attorney.

MR. CHOTE: Well, if I'm leaving something vital out of this—if it is apparent to all of you, but not me, I would appreciate knowing it so I can perhaps respond.

JUDGE SWEIGERT: Well, there is nothing that I have to offer to you at this moment.

MR. CHOTE: Thank you. [21]

JUDGE SWEIGERT: Thank you.

JUDGE WOLLENBERG: Thank you.

COURT CRIER: Court will not stand in recess.  
(Whereupon the hearing recessed at 1:55 p.m.) [22]

**Memorandum of Decision**

United States District Court, Northern District of California.

Raymond G. Chote, Plaintiff, vs. Edmund G. Brown, Jr., Secretary of State of California, Defendant. No. 72380.

Filed: Mar. 9, 1972.

Before: HAMLIN,\* Circuit Judge, WOLLENBERG and SWEIGERT, District Judges.

Plaintiff alleges in effect that he has been advised by the Registrar of Voters of Santa Clara County that a fee of \$425 must be paid in advance to entitle plaintiff to a place on the ballot for the June 6th primary election for the office of Representative to Congress from the 17th District; that plaintiff is financially unable to pay that fee and that March 10th is the closing date for filing.

California Elections Code, Section 6552 provides that the fee payable to the Secretary of State for filing a declaration of candidacy for the office of Representative in Congress shall be one percent (1%) of the first year's salary for that office, i.e., \$425.

Section 6553 provides that the filing fee required to be paid to the Secretary of State shall be paid, to the County Clerk at the time the forms for nomination are obtained; that the County Clerk shall not accept any papers unless the fees are paid at the time; that the County Clerk shall transmit the fees to the Secretary of State at the time he delivers the declaration of filing.

---

\*Judge Hamlin dissents.



Plaintiff, contending that these statutes are unconstitutional and in violation of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States, asks for a declaratory judgment and a preliminary injunction.

The suit is brought under the Civil Rights Act, Title 42 U.S.C. Section 1983. The Court accepts jurisdiction under 28 U.S.C. Section 1343(3) and, sitting as a court of three judges as required by 28 U.S.C. Section 2281, has heard plaintiff's application for preliminary injunction and the State's opposition thereto.

It has already been held in this district that a provision of the Charter of the City and County of San Francisco, requiring prepayment of a \$175 filing fee as a condition for placement of a candidate's name on the ballot for the office of Supervisor, is a discrimination against those who are unable to pay the fee and a violation of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States. *Kim Wong v. Mihaly*, 332 F.Supp. 165 (N.D. Calif. 1971).

That decision, after consideration of conflicting decisions among other districts, cited and relied upon a series of cases holding in effect that a law prohibiting candidates from getting their names on the ballot solely because they cannot post a certain amount of money is unconstitutional as a deprivation of equal protection of law; that such a statute can stand only when there is some alternative method whereby a candidate who is unable to pay the filing fee, can get on the ballot either by nominating petition, primary election or pauper's affidavit. *Georgia Socialist Workers Party v. Fortson*, 315 F.Supp. 1035 (N.D.Ga. 1970); *Jenness v.*

*Little*, 306 F.Supp. 925 (N.D.Ga. 1969)<sup>1</sup> and, specifically, upon *Carter v. Dies*, 321 F.Supp. 1358 (N.D. Tex. 1970), which has been recently affirmed by the Supreme Court of the United States in *Bullock v. Carter*, ....U.S. .... (2/24/72).

Our pending case is the first to arise since the Supreme Court has spoken and, of course, that decision is controlling here.

In *Bullock*, the Supreme Court considered a Texas primary election statute which set up a system of filing fees for various offices.<sup>2</sup> The Court (p. 15) although recognizing the validity of "reasonable candidate filing fees and licensing fees in other contexts," concludes that by requiring a candidate to shoulder the costs of conducting primary elections through filing fees and by providing no reasonable alternative means of access to the ballot is to erect a system which utilizes the criterion of ability to pay as a condition to

<sup>1</sup>In *Haar v. State*, Central District, California, No. 70-426-R, 3/18/70, a three judge District Court denied preliminary injunction in a comparable case wherein various Peace and Freedom Party members sought placement on the ballot for the primary election of June 2, 1970. However, the ground for denial seems to have been that the plaintiffs "had available to them as an alternative at this posture of these proceedings, the ability to seek nomination of their party without paying any filing fee, since the statute under attack prohibits only the qualification of candidates for the general election upon non-payment of the required fee 5 days prior to the primary election." See order of 3/18/70. Further, it is to be noted that Circuit Judge Ily was quoted in the order as dissenting and as entertaining the view that "to condition the candidacy for public office for otherwise qualified citizens upon their financial ability to pay a fee not specifically related to the cost of the present elective process is ilvidiously discriminatory and not justified by any compelling interest of the State of California."

<sup>2</sup>Under the Texas election filing fee system, which was struck down as a whole, the fees ranged from \$150 (less than the amount here involved) to as high as \$8,900.

getting" on the ballot, thus excluding some candidates otherwise qualified and denying an undetermined number of voters the opportunity to vote for candidates of their choice."

The Supreme Court, although recognizing (p. 13) that the state has a legitimate interest in using filing fees to relieve the state treasury of the cost of conducting primary elections, concludes that "there must be a showing of necessity."

In the present case no showing has been made by the state that covering the costs of elections is even the purpose of the statutory filing fee here in question. On the contrary, the statute ties the filing fee, not to election costs or costs of the filing process, but arbitrarily to the salary of the office sought. Further, even if such were the state purpose, the Supreme Court (p. 14) indicates that, when it is speaking of "reasonable" candidate filing fees, it has in mind merely filing fees sufficient "to cover the cost of filing, that is, the cost of placing a particular document on the public record." No showing has been made that such is either the purpose or extent of the filing fee here in question.

The Supreme Court, although recognizing the state has a legitimate interest in regulating the number of candidates on the ballot to prevent the overcrowding of the ballot, the clogging of its election machinery and voter confusion, concludes (p. 11) that "a state cannot achieve its objectives by totally arbitrary means" and that if the state's purpose is to weed out spurious candidates, "other means to protect those valid interests are available."

Further, the Supreme Court pointed out (p. 2) that under the Texas primary election law "There is no alternative procedure by which a potential candidate, who is unable to pay the fee, can get on the primary ballot by way of petitioning voters, and write-in votes are not permitted in primary elections for public office."

In our pending case California law makes no provision for any such alternative method by which an indigent candidate can get himself on the ballot.

That the burden is upon the state, not the plaintiff, to establish the requisite justification for its filing fee system, has been clearly indicated by the Supreme Court (p. 15); further, it has held that filing fee laws must be tested, not merely by the "rational basis rule" but by the strict standard of review set by *Harper v. Virginia*, 383 U.S. 663 (1966), i.e., it "must be closely scrutinized and found reasonably necessary to the accomplishment of state objective in order to pass constitutional muster," . . . "there must be a showing of necessity." (pp. 10, 13).

Since no such showing has been made by the State, concerning either the necessity, the purpose or the reasonableness of the filing fee statutes in question, we conclude that within the rationale and holding of *Bullock*, *supra*, plaintiff may prevail on the merits and that, absent a preliminary injunction, his constitutional right may be irreparably lost.

It is, therefore, ordered and decreed that defendant, Secretary of State of California, his successor in office or agents or employees and all other persons in active concert or participation with him, including County Clerks or Registrars of Voters charged by Section

6553 with the collection of election filing fees, be and they are hereby preliminarily enjoined from enforcing, following or applying, either directly or indirectly as to plaintiff, Raymond G. Chote, the provisions of said California Elections Code Sections 6552 or 6553, provided, however, that this order shall be applicable only if (1) said plaintiff is otherwise eligible under the State or other applicable election laws, and (2) said plaintiff files with defendant, Secretary of State, or the proper County Clerk or Registrar of Voters, an affidavit that he has no property or money from which to pay the said required filing fee and is, therefore, financially unable to pay the same.

This preliminary injunction, and the terms and conditions thereof, shall apply also to persons represented as a class in this action by plaintiff, to wit, persons in substantially the same position as plaintiff herein, and (1) who are otherwise eligible under the state or other applicable election laws, and (2) who file with defendant, Secretary of State, or the proper County Clerk or Registrar of Voters, an affidavit that he has no property or money from which to pay the said required filing fee and is, therefore, financially unable to pay the same.

Dated: March 9, 1972.

ALBERT C. WOLLENBERG

United States District Judge

W. T. SWEIGERT,

United States District Judge



**HAMLIN, Circuit Judge, Dissenting:**

In *Bullock v. Carter*, No. 70 128, February 24, 1972, the United States Supreme Court in discussing such a question in reference to filing fees in Texas said: "It must be emphasized that nothing herein is intended to cast doubt on the validity of reasonable candidate filing fees or licensing fees in other contexts." It has not been shown in this case that the filing fee complained of is not reasonable.

Accordingly, applicant's request for injunctive relief and a declaration that Sections 6552 and 6553 are unconstitutional should be denied.

Dated: March 9, 1972.

/s/ ILLEGIBLE

United States Circuit Judge

**Answer**

United States District Court, Northern District of California.

Raymond G. Chote, Plaintiff, v. Edmund G. Brown, Jr., Secretary of State of California, Defendant. No. C-72-380-WTS.

Filed: Mar. 23, 1972.

Comes now the defendant, Edmund G. Brown, Jr., Secretary of State of California, and in answer to the complaint in the above entitled case, admits, denies and alleges as follows:

**I**

In answer to paragraph II of the complaint, defendant Edmund G. Brown, Jr. denies each and every, generally and specifically, all and singular, the allegations contained therein.

**II**

In answer to paragraph III of the complaint, defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations therein, and based upon such lack of knowledge or information denies each and every, all and singular, generally and specifically, the allegations contained in paragraph III of the complaint.

**III**

In answer to paragraph V of the complaint defendant, Edmund G. Brown, Jr., is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and based upon the lack of such knowledge or information, denies each and every, generally and specifically, all and singular the allegations contained in paragraph V of the complaint.

#### IV

In answer to paragraph VI, subdivisions 2, 3 and 4 of the complaint, defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the averments therein, and based upon said lack of knowledge or information, denies generally and specifically, each and every, all and singular, the averments contained therein. In answer to subdivision 5 of paragraph VI, defendant denies generally and specifically, each and every, all and singular, the averments contained therein.

#### V

In answer to paragraph VIII of the complaint, defendant alleges that he is without knowledge or information sufficient to form a belief as to the truth of the averment that no previous application for the relief sought herein has been made to this or any other court, and based upon such lack of knowledge or information, denies that averment. In answer to the remainder of paragraph VIII, defendant denies generally and specifically, all and singular, each and every, allegation contained therein.

AS A SEPARATE AND AFFIRMATIVE DEFENSE defendant, Edmund G. Brown, Jr., Secretary of State of the State of California, alleges that the filing fees and other requirements contained in California Elections Code, sections 6552 and 6553 are reasonable and necessary for the conduct of orderly elections in the State of California. Most of the votes cast in the State of California are upon either voting machines or other types of mechanical devices. Without a limitation upon the number of candidates running for offices, these voting machines and other mechanical

devices would not function properly and the election processes could not proceed in an orderly fashion. The filing fees further serve to offset a portion of the cost of placing the candidate's name on the ballot.

**WHEREFORE,** defendant Edmund G. Brown, Jr. respectfully prays as follows:

1. That the preliminary injunction heretofore issued in this matter be vacated, and that a permanent injunction be denied and the complaint dismissed.

2. For costs and for such other and further relief as the court may deem proper.

**Dated:** March 22, 1972.

**EVELLE J. YOUNGER**

**Attorney General**

**ROBERT BURTON**

**Assistant Attorney General**

**J. M. SANDERSON**

**Deputy Attorney General**

**Attorneys for Defendant**

**Notice of Appeal to the Supreme Court  
of the United States**

**United States District Court, Northern District of  
California.**

**Raymond G. Chote, Plaintiff, v. Edmund G. Brown,  
Jr., Secretary of State of California, Defendant. No.  
C-72-380-WTS.**

**Notice of Appeal to the Supreme Court of the United  
States.**

Notice is hereby given that defendant above named  
hereby appeals to the Supreme Court of the United  
States from the Order preliminarily enjoining defend-  
ant from enforcing directly or indirectly the provisions  
of California Elections Code sections 6552 and 6553.

This appeal is taken pursuant to 28 U.S.C. section  
1253.

**Dated: April 6, 1972.**

**EVELLE J. YOUNGER**

**Attorney General**

**ROBERT BURTON**

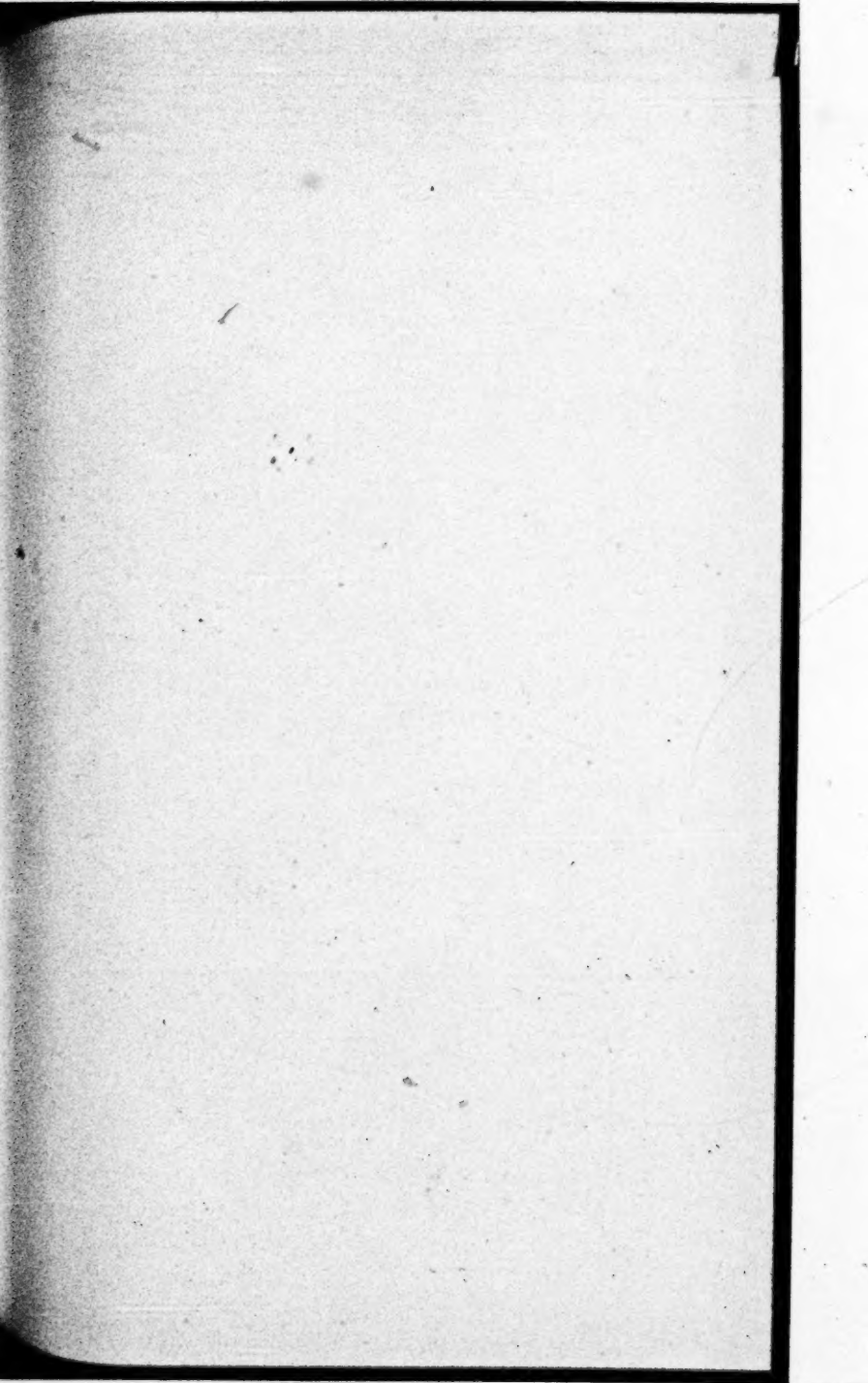
**Assistant Attorney General**

**J. M. SANDERSON**

**Deputy Attorney General**

**Attorneys for Defendants**







**Supreme Court of the United States**

**No. 71-1583**

**Edmund G. Brown, Jr., Secretary of  
of State of California,**

**Appellant,**

**v.**

**Raymond G. Chote**

**APPEAL from the United States District Court  
for the Northern District of California.**

**The statement of jurisdiction in this case having  
been submitted and considered by the Court, probable  
jurisdiction is noted.**

**October 16, 1972**

Supreme Court of the United States

No. 71-1283

Edward G. Brown, Jr., Secretary of  
of State of California,

Appellant,

v.

Raymond E. Olson

Appeal from the United States District Court

for the Southern District of California.

The statement of jurisdiction in this case is

submitted and approved by the Court, prob-

ation is made.

October 14, 1971

**Supreme Court of the United States**

**No. 71-1583**

**Edmond G. Brown, Jr., Secretary  
of State of California,**

**Appellant,**

**v.**

**Raymond G. Chase**

**ON CONSIDERATION of the motion of the appellee  
to leave to proceed in forma pauperis,**

**IT IS ORDERED by this Court that the said motion  
be granted, and the same is hereby, granted.**

**October 16, 1972**



Supreme Court of the United States

No. 71-1383

Samuel G. Brown, Jr., Secretary  
of State of California,

Respondent,

Raymond G. Brown

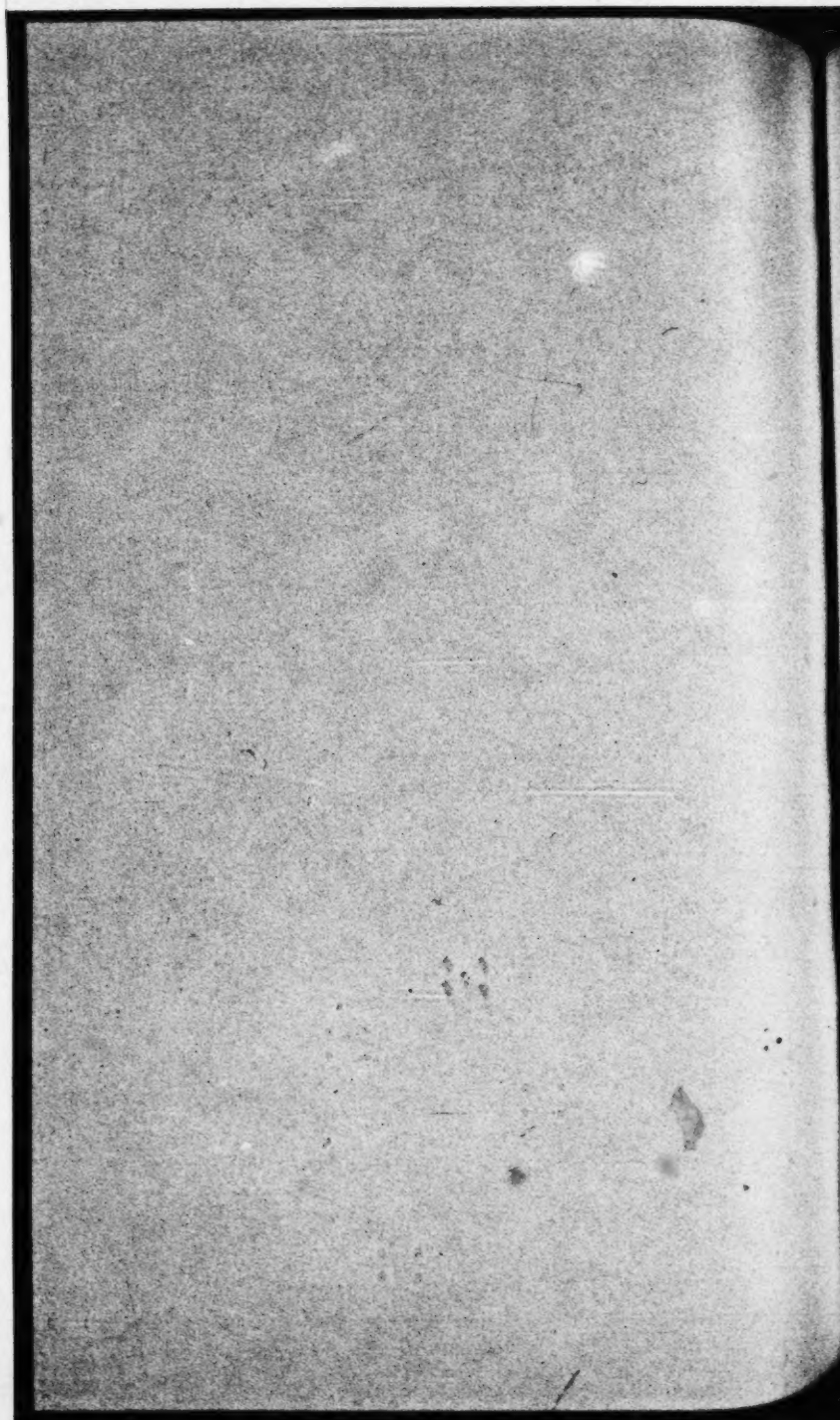
ON CERTIORARI of the action of the appeal

from the Supreme Court of California.

IT IS ORDERED by this Court that the writ be

and the case is hereby granted.

October 14, 1975



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IN THE  
**Supreme Court of the United States**

October Term, 1971

No. \_\_\_\_\_

**EDMUND G. BROWN, JR., Secretary of State of the State  
of California,**

*Appellant,*

vs.

**RAYMOND G. CHOTE,**

*Appellee.*

On Appeal From the United States District Court for the  
Northern District of California.

**JURISDICTIONAL STATEMENT**

Appellant Edmund G. Brown, Jr., the Secretary of State of the State of California, appeals from the preliminary injunction entered on March 9, 1972, by a specially constituted three-judge United States District Court for the Northern District of California. This statement is submitted to demonstrate that the Supreme Court of the United States has jurisdiction of this appeal and substantial questions are presented.

**Opinion Below**

The Memorandum of Decision which embodies the preliminary injunction is not yet reported. A copy of said Memorandum of Decision is attached hereto as Appendix A.

### **Jurisdiction**

Suit was brought in the United States District Court for the Northern District of California for declaratory and injunctive relief pursuant to title 28, United States Code, sections 2201 and 2202, and title 42, United States Code, section 1893. Jurisdiction of the District Court was invoked pursuant to title 28, United States Code, sections 1331 and 1343. Appellee sought a declaration that California Elections Code sections 6552 and 6553 were in violation of the First and Fourteenth Amendments to the United States Constitution. Since appellee sought an injunction against the enforcement of state statutes, a three-judge court was convened pursuant to the authority and requirements of title 28, United States Code, sections 2281 and 2284.

The District Court's opinion and judgment granting declaratory and injunctive relief was entered on March 9, 1972, and appellant's notice of appeal to this Court was filed in the United States District Court for the Northern District of California on April 7, 1972. A copy of the notice of appeal is attached hereto as Appendix B.

The jurisdiction of the Supreme Court of the United States on this direct appeal is conferred by title 28, United States Code, section 1253.

### **Statutes Involved**

The statutes involved are California Elections Code sections 6552 and 6553 which provide as follows:

#### **Section 6552:**

"The following fees for filing declarations of candidacy shall be paid to the Secretary of State by each candidate:

"(a) Two percent of the first year salary for the office of United States Senator or for any state office. The fee prescribed in this subdivision does not apply to the office of State Senator or Assemblyman or to an office to be voted for in a district comprising more than one county.

"(b) One percent of the first year salary for the office of Representative in Congress or for any office to be voted for in any district comprising more than one county, except the office of State Senator or Assemblyman.

"(c) One percent of the first year salary for the office of State Senator or Assemblyman."

**Section 6553:**

"The filing fee required to be paid to the Secretary of State pursuant to subdivisions (a) and (b) of Section 6552 shall be paid to the county clerk at the time the forms for nomination are obtained from the county clerk. The filing fee required to be paid to the Secretary of State pursuant to subdivision (c) of Section 6552 shall be paid upon the filing of the candidate's declaration of his intention to become a candidate, pursuant to Section 25500, and such filing fee shall be nonrefundable. The county clerk shall not accept any papers unless the fees are paid at the time required by this section, or unless satisfactory evidence is given to the county clerk or to the registrar of voters that such fee has been paid at the time of the declaration of candidacy in another county. The county clerk shall transmit the fees to the Secretary of State at the time he delivers the declarations of candidacy for filing."

— 4 —

## Questions Presented

Under the decision of this Court in *Bullock v. Carter*, 405 U.S. 134, 92 S.Ct. 849 (1972), when a state statute requiring a candidate's filing fee of one per cent (1%) of the first year's salary for the office is challenged on Equal Protection grounds does the "rational basis" or "close scrutiny" standard of judicial review apply?

Do California Elections Code sections 6552 and 6553 deny voters or indigent prospective candidates equal protection of the laws?

### Statement of the Case

California law provides for a party primary to select party nominees for partisan offices to be voted upon at the general election. (Cal. Const. art. II, §2.5; Cal. Elec. Code §6400, *et seq.*) The direct primary in 1972 is on June 6. (Cal. Elec. Code §2501.)

A candidate's name will be printed on the direct primary ballot only if a declaration of candidacy is filed. (Cal. Elec. Code §6490.) The candidate must also cause sponsor certificates to be executed by his sponsors. The number of such certificates varies with the office—for Representative in Congress, the number is not less than 40 nor more than 60. (Cal. Elec. Code §§6493-6495.) The declarations of candidacy and sponsor certificates must be delivered to the county clerk at least 88 days prior to the direct primary. (Cal. Elec. Code §§6499, 6511.) The declarations of candidacy for state and federal offices are forwarded by the county clerk to the secretary of state where they are filed. (Cal. Elec. Code §§6519, 6550.)

Candidates must pay the statutory filing fee not later than the time the nomination forms are obtained from



the county clerk. Fees received from candidates for state and federal offices are transmitted to the secretary of state. (Cal. Elec. Code §6553.)

California law makes provision for an independent nomination process (Cal. Elec. Code §6800, *et seq.*) and for a write-in candidacy (Cal. Elec. Code §§18600-18604). However, such candidates must pay the statutory fees required of other candidates for the same office. (Cal. Elec. Code §§6553, 6555.)

The successful candidate in June does not pay another fee for the general election.

Appellee desired to seek the nomination of his party as Representative in Congress from the Seventeenth Congressional District in California. On February 17, 1972, he obtained declaration of candidacy and sponsor certificate forms from the Santa Clara County Registrar of Voters. Appellee obtained the forms by issuing a check in the sum of \$425. Typed on the face thereof were the words "written under protest for filing fee." The check was admittedly worthless. [Rep. Tr. pp. 13, 15.] Appellee was informed that his name would not be placed on the primary ballot unless the check in payment of the filing fee was honored at the bank.

On March 3, 1972, appellee commenced an action for declaratory relief and injunction in the United States District Court, Northern District of California. Appellant was directed to show cause on or before March 8, 1972, why a preliminary injunction should not issue. On March 8, 1972, appellant filed written opposition to the granting of a preliminary injunction. The application for a preliminary injunction was heard before the three-judge court on March 8, 1972. Appellee appeared in person without counsel. After argument.

the matter was submitted for decision. [Rep. Tr. pp. 1-22].

On March 9, 1972, the three-judge District Court, Justice Hamlin dissenting, granted a preliminary injunction enjoining appellant from enforcing or applying California Elections Code sections 6552 or 6553 as to appellee and the class represented by appellee. (App. A hereto.) On March 23, 1972, appellant filed an answer to the complaint.

On April 7, 1972, appellant filed a notice of appeal from the order granting a preliminary injunction. (App. B hereto.)

### The Questions Are Substantial

Reasonable candidate filing fees have been a part of the California Election law for over 60 years. Most states provide for some form of candidate filing fees.<sup>1</sup>

California has long assumed that reasonable candidate filing fees would tend to prevent an indiscriminate scramble for office, tend to limit the ballot to serious candidates, control ballot size, and also would, in a relatively small way, raise revenue to defray a portion of the election costs. The California Supreme Court upheld the early filing fee system in *Socialist Party v. Uhl*, 155 Cal. 776, 103 Pac. 181 (1909).

The Federal District Courts, in recent years, have sharply divided in cases involving candidate filing fees, over the standard of judicial review under the Equal Protection Clause, whether an alternative means of access to the ballot position is required, or whether party primaries are to be distinguished from final elections.

<sup>1</sup>The statutes are compiled in 120 U. Pa. L. Rev. 109, 136-42 (1971) and 70 Mich. L. Rev. 558 (1972).

**Fees Upheld:**

*Wetherington v. Adams*, 309 F. Supp. 318 (N.D. Fla. 1970);

*Fowler v. Adams*, 315 F. Supp. 592 (M.D. Fla. 1970);

*Spillers v. Slaughter*, 325 F. Supp. 550 (M.D. Fla. 1971), *vacated and remanded sub. nom.*;

*Pope v. Halmowitz*, 404 U.S. 806;

*Haag v. State of California*, (C.D. Cal. No. 70-426-R, unrep.), *injunction denied* Mar. 18, 1970.

**Fees Invalid:**

*Jenness v. Little*, 306 F. Supp. 925 (N.D. Ga. 1969);

*Georgia Socialist Workers Party v. Fortson*, 315 F. Supp. 1035 (N.D. Ga. 1970);

*Thomas v. Mims*, 317 F. Supp. 179, 181 (S.D. Ala. 1970);

*Wong v. Mihaly*, 332 F. Supp. 165 (N.D. Cal. 1971).

In holding that the Texas filing fee system reviewed in *Bullock v. Carter*, 405 U.S. 134, 92 S.Ct. 849 (1972), resulted in a denial of equal protection of the laws, the Court said that it did not intend to cast doubt on reasonable candidate filing fees. (92 S.Ct. at 859.)

The three-judge court below could not agree on whether the California filing fee system was condoned or condemned under *Bullock*. A state appellate court had similarly divided two to one on the question. *Zapata v. Davidson*, 24 Cal. App. 3d 823, 101 Cal. Rptr. 438 (1972) (hearing granted by Cal. S.Ct. May 10, 1972).

**The District Court Erroneously Concluded That Appellant Was Compelled to Justify Elections Code Section 6552 as Necessary to Accomplish Legitimate State Objectives**

The Texas filing fee system before this Court in *Bullock v. Carter, supra*, required a candidate to finance the entire cost of primary elections and resulted in patently excessive fees.

In analyzing the threshold consideration whether the Texas system should be sustained if it was shown to have some rational basis or whether it must withstand a more rigid standard of review, this Court in *Bullock* appeared to say that where filing fees are not patently exclusionary but rather are of a size "which most candidates could be expected to fulfill from their own resources or at least through modest contributions," the fees would not have such an impact upon voters as to require the more rigid standard of review. (405 U.S. at 143, 92 S. Ct. at 856.)

Certainly, the California candidate filing fees of one per cent (or two per cent) of the annual salary are reasonable.

*Socialist Party v. Uhl, supra*, 155 Cal. 776, 103 Pac. 181 (1909);

*Bodner v. Gray*, 129 So. 2d 419 (Fla. 1961);

*Spillers v. Slaughter, supra*, 325 F. Supp. 550 (M.D. Fla. 1971).

The District Court's opinion (App. A hereto) assumes that the State had to justify reasonable candidate filing fees as necessary to further legitimate state objectives. Appellant submits that such assumption was unwarranted under the *Bullock* decision.

**Elections Code Section 6552 Which Required Appellee to Pay One Per Cent of the Annual Salary of the Office Sought Is Clearly a Reasonable Candidate Filing Fee and Does Not Constitute a Denial of Equal Protection of the Laws**

**The Court said in *Bullock*:**

“ . . . It must be emphasized that nothing herein is intended to cast doubt on the validity of reasonable candidate filing fees or licensing fees in other contexts. By requiring candidates to shoulder the costs of conducting primary elections through filing fees and by providing no reasonable alternative means of access to the ballot, the State of Texas has erected a system which utilizes the criterion of ability to pay as a condition to being on the ballot, thus excluding some candidates otherwise qualified on denying an undetermined number of voters the opportunity to vote for candidates of their choice. . . .”  
(405 U.S. at 149, 92 S.Ct. at 859.)

The issue presented by the instant case is whether reasonable candidate filing fees applicable to all candidates are valid or does California deny poor people equal protection of the laws by not providing an alternative to filing fees, such as a nominating petition signed by a requisite number of electors. A subsidiary issue is whether the reference by this Court in *Bullock* to reasonable filing fees, contemplated something less than one per cent of the annual salary for the office, e.g., the actual costs of processing nomination papers, printing ballots, etc. (*Bullock v. Carter*, n. 29.)



The California filing fee system differs from the Texas filing fee system at issue in *Bullock* in that California does not apportion the total cost of the primary among the candidates. California candidates do not pay the large fees required by Texas law and most candidates could be expected to fulfill California's requirements from their own resources or at least through modest contributions.

The candidates in California relieve the State and county treasury of only a small portion of the expense of conducting primary and general elections. As was pointed out to the court below, a statewide election costs several million dollars. The filing fees for state and federal offices in 1972 were estimated at \$225,000 and the administrative costs of the Secretary of State for both the primary and general elections is approximately four times that sum. The counties, while receiving filing fees for local candidates, absorb the bulk of the election costs for all candidates. (Cal. Elec. Code § 10000.)

The extent and nature of the California candidate filing fees do not realistically exclude candidates with a modicum of support. Regardless of the standard of review, the California filing fee system does not deny voters the opportunity to vote for serious candidates and does not deny candidates or voters the equal protection of the laws.

### III The Case Is Not Moot

Appellee Chote and several members of his class will be on the June 6 primary ballot. But the injunction below may well apply to write-in candidates, independent nominations, local elections, special elections to fill vacancies, and of course, future primary elections. The decision is also of continuing interest to the Legislature, which, if the decision below is valid, must consider revisions to correct the unfairness of collecting a fee from a thrifty citizen but not from a temporarily impoverished citizen.

Furthermore, the conflicting readings of *Bullock* and the conflicting District Court decisions which preceded the decision prompted a multiplicity of litigation in California in 1972 which should not be repeated in the future.

In February and March, 1972, the following cases were filed which challenged the California candidate filing fees:

*Blaine v. Brown*, Los Angeles Super. Ct. No. 23138;

*Reiff v. Sexton, et al.*, San Diego Super. Ct. No. 331843;

*Caprio v. Brown*, Sacramento Super. Ct. No. 331388;

*Fujii v. Brown*, Sacramento Super. Ct. No. 219924;

*Holstrom v. Brown*, Santa Barbara Super. Ct. No. 95342;

*Alex Brown v. Reagan*, U.S.D.C., E.D. Cal. No. F 627 Civil.

Thus, the validity of reasonable candidate filing fees reflects a continuing controversy in the federal-state area which is certain of repetition. The matter is not moot.

*Moore v. Ogilvie*, 394 U.S. 814, 816 (1969);

*Whitcomb v. Chavis*, 403 U.S. 124, 140-41 (1971);

*So. Pac. Terminal Co. v. Int. Comm.*, 219 U.S. 498, 515 (1911).

### **Conclusion**

The District Court majority decision erroneously reads this Court's opinion in *Bullock* as invalidating the California candidate filing fees.

It is submitted that the District Court majority has erred, that the questions presented by this appeal are substantial, that they are of great nationwide, public importance, and that they deal with important California election laws. It is urged that probable jurisdiction be noted.

Respectfully submitted,

EVELLE J. YOUNGER,

*Attorney General,*

ROBERT BURTON,

*Assistant Attorney General,*

HENRY G. ULLERICH,

*Deputy Attorney General,*

By HENRY G. ULLERICH,

*Attorneys for Appellant.*

## **APPENDIX A.**

### **Memorandum of Decision.**

**United States District Court, Northern District of California.**

**Raymond G. Chote, Plaintiff, vs. Edmund G. Brown, Jr., Secretary of State of California, Defendant.**  
**No. 72380.**

**Before: HAMLIN,\* Circuit Judge, WOLLENBERG and SWEIGERT, District Judges.**

Plaintiff alleges in effect that he has been advised by the Registrar of Voters of Santa Clara County that a fee of \$425 must be paid in advance to entitle plaintiff to a place on the ballot for the June 6th primary election for the office of Representative to Congress from the 17th District; that plaintiff is financially unable to pay that fee and that March 10th is the closing date for filing.

California Elections Code, Section 6552 provides that the fee payable to the Secretary of State for filing a declaration of candidacy for the office of Representative in Congress shall be one percent (1%) of the first year's salary for that office, i.e., \$425.

Section 6553 provides that the filing fee required to be paid to the Secretary of State shall be paid to the County Clerk at the time for forms for nomination are obtained; that the County Clerk shall not accept any papers unless the fees are paid at the time; that the County Clerk shall transmit the fees to the Secretary of State at the time he delivers the declaration of filing.

Plaintiff, contending that these statutes are unconstitutional and in violation of the equal protection

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**\*Judge Hamlin dissents.**

clause of the Fourteenth Amendment of the Constitution of the United States, asks for a declaratory judgment and a preliminary injunction.

The suit is brought under the Civil Rights Act, Title 42 U.S.C. Section 1983. The Court accepts jurisdiction under 28 U.S.C. Section 1343(3) and, sitting as a court of three judges as required by 28 U.S.C. Section 2281, has heard plaintiff's application for preliminary injunction and the State's opposition thereto.

It has already been held in this district that a provision of the Charter of the City and County of San Francisco, requiring prepayment of a \$175 filing fee as a condition for placement of a candidate's name on the ballot for the office of Supervisor, is a discrimination against those who are unable to pay the fee and a violation of the equal protection clause of the Fourteenth Amendment of the Constitution of the United States. *Kim Wong v. Milhaly*, 332 F.Supp. 165 (N.D.Calif. 1971).

That decision, after consideration of conflicting decisions among other districts, cited and relied upon a series of cases holding in effect that a law prohibiting candidates from getting their names on the ballot solely because they cannot post a certain amount of money is unconstitutional as a deprivation of equal protection of law; that such a statute can stand only when there is some alternative method whereby a candidate who is unable to pay the filing fee, can get on the ballot either by nominating petition, primary election or pauper's affidavit. *Georgia Socialist Workers Party v. Fortson*, 315 F.Supp. 1035 (N.D.Ga. 1970); *Jenness v. Little*, 306 F.Supp. 925 (N.D.Ga. 1969)<sup>1</sup> and, specifically,

<sup>1</sup>In *Hang v. State*, Central District, California, No. 70 426-R, 3/18/70, a three judge District Court denied preliminary injunc-



upon *Carter v. Dies*, 321 F.Supp. 1358 (N.D.Tex. 1970), which has been recently affirmed by the Supreme Court of the United States in *Bullock v. Carter*, .... U.S. .... (2/24/72).

Our pending case is the first to arise since the Supreme Court has spoken and, of course, that decision is controlling here.

In *Bullock*, the Supreme Court considered a Texas primary election statute which set up a system of filing fees for various offices.<sup>2</sup> The Court (p. 15) although recognizing the validity of "reasonable candidate filing fees and licensing fees in other contexts," concludes that by requiring a candidate to shoulder the costs of conducting primary elections through filing fees and by providing no reasonable alternative means of access to the ballot is to erect a system which utilizes the criterion of ability to pay as a condition to getting on the ballot, thus excluding some candidates otherwise qualified and denying an undetermined number of voters the opportunity to vote for candidates of their choice."

tion in a comparable case wherein various Peace and Freedom Party members sought placement on the ballot for the primary election of June 2, 1970. However, the ground for denial seems to have been that the plaintiffs "had available to them as an alternative at this posture of these proceedings, the ability to seek nomination of their party without paying any filing fee, since the statute under attack prohibits only the qualification of candidates for the general election upon non-payment of the required fee 5 days prior to the primary election." See order of 5/18/70. Further, it is to be noted that Circuit Judge Ely was quoted in the order as dissenting and as entertaining the view that "to condition the candidacy for public office for otherwise qualified citizens upon their financial ability to pay a fee not specifically related to the cost of the present elective process is invidiously discriminatory and not justified by any compelling interest of the State of California."

<sup>2</sup>Under the Texas election filing fee system, which was struck down as a whole, the fees ranged from \$150 (less than the amount here involved) to as high as \$8,900.

The Supreme Court, although recognizing (p. 13) that the state has a legitimate interest in using filing fees to relieve the state treasury of the cost of conducting primary elections, concludes that "there must be a showing of necessity."

In the present case no showing has been made by the state that covering the costs of elections is even the purpose of the statutory filing fee here in question. On the contrary, the statute ties the filing fee, not to election costs or costs of the filing process, but arbitrarily to the salary of the office sought. Further, even if such were the state purpose, the Supreme Court (p. 14) indicates that, when it is speaking of "reasonable" candidate filing fees, it has in mind merely filing fees sufficient "to cover the cost of filing, that is, the cost of placing a particular document on the public record." No showing has been made that such is either the purpose or extent of the filing fee here in question.

The Supreme Court, although recognizing the state has a legitimate interest in regulating the number of candidates on the ballot to prevent the overcrowding of the ballot, the clogging of its election machinery and voter confusion, concludes (p. 11) that "a state cannot achieve its objectives by totally arbitrary means" and that if the state's purpose is to weed out spurious candidates, "other means to protect those valid interests are available."

Further, the Supreme Court, pointed out (p. 2) that under the Texas primary election law "There is no alternative procedure by which a potential candidate, who is unable to pay the fee, can get on the primary ballot by way of petitioning voters, and write-in votes are not permitted in primary elections for public office."

In our pending case California law makes no provision for any such alternative method by which an indigent candidate can get himself on the ballot.

That the burden is upon the state, not the plaintiff, to establish the requisite justification for its filing fee system, has been clearly indicated by the Supreme Court (p. 15); further, it has held that filing fee laws must be tested, not merely by the "rational basis rule" but by the strict standard of review set by *Harper v. Virginia*, 383 U.S. 663 (1966), i.e., it "must be closely scrutinized and found reasonably necessary to the accomplishment of state objectives in order to pass constitutional muster," . . . "there must be a showing of necessity." (pp. 10, 13).

Since no such showing has been made by the State, concerning either the necessity, the purpose or the reasonableness of the filing fee statutes in question, we conclude that within the rationale and holding of *Bullock*, supra, plaintiff may prevail on the merits and that, absent a preliminary injunction, his constitutional right may be irreparably lost.

It is, therefore, ordered and decreed that defendant, Secretary of State of California, his successor in office or agents or employees and all other persons in active concert or participation with him, including County Clerks or Registrars of Voters charged by Section 6553 with the collection of election filing fees, be and they are hereby preliminarily enjoined from enforcing, following or applying, either directly or indirectly as to plaintiff, Raymond G. Chote, the provisions of said California Elections Code Sections 6552 or 6553, provided, however, that this order shall be applicable only if (1) said plaintiff is otherwise eligible under the

State or other applicable election laws, and (2) said plaintiff files with defendant, Secretary of State, or the proper County Clerk or Registrar of Voters, an affidavit that he has no property or money from which to pay the said required filing fee and is, therefore, financially unable to pay the same.

This preliminary injunction, and the terms and conditions thereof, shall apply also to persons represented as a class in this action by plaintiff, to wit, persons in substantially the same position as plaintiff herein, and (1) who are otherwise eligible under the state or other applicable election laws, and (2) who file with defendant, Secretary of State, or the proper County Clerk or Registrar of Voters, an affidavit that he has no property or money from which to pay the said required filing fee and is, therefore, financially unable to pay the same.

Dated: March 9, 1972.

**ALBERT C. WOLLENBERG**  
**UNITED STATES DISTRICT JUDGE**  
**W. T. SWIGERT**  
**UNITED STATES DISTRICT JUDGE**

**HAMLIN, Circuit Judge, Dissenting:**

In *Bullock v. Carter*, No. 70 128, February 24, 1972, the United States Supreme Court in discussing such a question in reference to filing fees in Texas said: "It must be emphasized that nothing herein is intended to cast doubt on the validity of reasonable candidate filing fees or licensing fees in other contexts." It has not been shown in this case that the filing fee complained of is not reasonable.

Accordingly, applicant's request for injunctive relief and a declaration that Sections 6552 and 6553 are unconstitutional should be denied.

Dated: March 9, 1972.

/s/ Oliver D. Hamlin

UNITED STATES CIRCUIT JUDGE



**APPENDIX B.**

**Notice of Appeal to the Supreme Court to the  
United States.**

**United States District Court, Northern District of  
California.**

**Raymond G. Chote, Plaintiff, v. Edmund G. Brown,  
Jr., Secretary of State of California, Defendant. No.  
C-72-380-WTS.**

**Notice of Appeal to the Supreme Court of the United  
States.**

Notice is hereby given that defendant above named  
hereby appeals to the Supreme Court of the United  
States from the Order preliminarily enjoining defendant  
from enforcing directly or indirectly the provisions of  
California Elections Code sections 6552 and 6553.

This appeal is taken pursuant to 28 U.S.C. section  
1253.

Dated: April 6, 1972.

**EVELLE J. YOUNGER**

**Attorney General**

**ROBERT BURTON**

**Assistant Attorney General**

**J. M. SANDERSON**

**Deputy Attorney General**

**Attorneys for Defendants**

